

FILED

APR 29 2011

PATRICK E. DUFFY, CLERK

By DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

DALE PETERSEN,)	CV 10-57-H-DWM-RKS
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
STATE OF MONTANA, et al.,)	
)	
Defendants.)	
_____)	

Plaintiff Dale Petersen filed his Complaint on December 13, 2010.

Magistrate Judge Keith Strong entered an Order on February 8, 2011 which determined the Complaint was subject to dismissal for failing to state a claim upon which relief can be granted. Judge Strong identified defects which could potentially be cured by the allegation of additional facts and gave Peterson until March 11, 2011 to file an amended complaint. Petersen did not comply. Judge

Strong entered Findings and Recommendation on April 5, 2011 and recommended dismissing Petersen's Complaint for failure to state a claim on which relief may be granted. Plaintiff did not timely object to the Findings and Recommendation, and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1).

This Court will review the Findings and Recommendation for clear error.

McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).


After a review of Judge Strong's Findings and Recommendation, I find no clear error. Accordingly,

IT IS HEREBY ORDERED that Judge Strong's Findings and Recommendation (dkt #6) are adopted in full. This action is DISMISSED WITH PREJUDICE for failure to state a claim on which relief may be granted. The Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g). The Clerk of Court is directed to have the docket reflect that the Court certified pursuant to Rule 24(a)(3)(A) of the Federal Rules of

Appellate Procedure that any appeal of this decision would not be taken in good faith.

Dated this 29th day of April, 2011.



Donald W. Molloy, District Judge
United States District Court

